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Alameda County Pesticide Regulatory Program 2006/2007 Performance Evaluation Report

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October 9, 2007

Performance Evaluation of Alameda County Agricultural Commissioner's Pesticide Use Enforcement Program

This report provides a performance evaluation of Alameda County Agricultural Commissioner's (CAC's) pesticide use enforcement (PUE) program for the fiscal year (FY) 2006/2007. The assessment evaluates the performance of goals identified in the CAC's Enforcement Work Plan (EWP) as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Standards Compendium.

I. Summary Report of Core Program Elements

A) Restricted Materials Permitting:

The restricted materials permitting program element was found to meet DPR standards and EWP goals.

B) Compliance Monitoring:

The compliance monitoring program element was found to meet DPR standards and EWP goals.

C) Enforcement Response:

The enforcement response program element was found to meet DPR standards and EWP goals.

Summary Statement:

Although deficiencies have been identified in the Alameda CAC's pesticide use program, the program is currently assessed as effective.

II. Assessment of Core Program Effectiveness and Work Plan Goals

A) Restricted Materials Permitting:

1) Permit Issuance

The Alameda CAC permit issuance procedures and performance were evaluated through observation and interviews of relevant staff and found to conform to DPR standards and expectations. The biologists that issue permits all possess Pesticide Regulation and Investigation and Environmental Monitoring licenses. The DPR evaluation determined that permits are:

- Issued only to qualified applicants;
- Signed by authorized persons;
- Issued for time periods allowed by law; and
- Permit amendments follow approved procedures.

The Alameda CAC only issues restricted materials permits for a one-year period. Approximately 158 restricted materials permits, 79 non-agricultural permits and 140 Operator I.D.s were issued in FY 2006/2007. The PUE Deputy gives annual training on the policies and procedures used to issue permits and properly identify

sites.

2) Site Evaluation

The Alameda CAC site evaluation procedures were evaluated through observation, record review, and interviews of relevant staff and found to conform to DPR standards and expectations. The CAC reviewed approximately 3,790 Notices of Intent (NOI) annually and conducted approximately 29 Pre-application inspections associated with those NOIs. The permits:

- Contained the necessary information;
- Identified treatment areas and sensitive areas that could be adversely impacted by the permitted uses; and
- Identified mitigation measures and included conditions that addressed known hazards.

The CAC staff adequately evaluated permits and determined if the use of feasible alternatives was required. The program reviews all NOIs in a timely manner and adequately monitored agricultural and nonagricultural permits utilizing pre-application site evaluations and use monitoring inspections.

NOIs are received by fax machine, telephone (main office), and answering machine. Certified pesticide enforcement staff reviews the NOIs and compares them to the permits in the computer. One biologist is scheduled to remain in the main office each day and is responsible to review the days NOIs and issue permits. Each biologist in the field has a cellular telephone and is often contacted to check sites in sensitive areas when NOIs are submitted.

B) Compliance Monitoring:

1) Inspections

The Alameda CAC inspection procedures and performance were evaluated through DPR oversight inspections and record review and were found to mostly conform to DPR standards and expectations.

- Biologists performing inspections possess Pesticide Regulation and Investigation and Environmental Monitoring licenses.
- Inspections are performed according to the inspection strategy documented in the CAC's EWP; however, the 2005-2006 oversight inspections conducted on smaller or independent vineyards in the Livermore area (excluding Wente and Concannon Vineyards) appear to indicate that there is a trend to non-compliance of regulations associated with smaller growers operations. Wente/Concannon previously managed many of the smaller growers vineyards, so the smaller growers did not conduct vineyard management and were removed from pesticide use regulatory issues and requirements. Wente/Concannon cut back on the amount of grapes they would contract to buy from these smaller growers so all vineyard management requirements fell back on them. In many cases, insufficient actions were taken by smaller growers no longer managed by Wente/Concannon to comply with pesticide use regulatory requirements. This perceived trend has not been addressed by

the CAC and there has been no improved inspection strategy implemented to correct this problem.

- Inspections are performed according to DPR policies and procedures and inspection reports are complete and comprehensive. The inspections adequately provide the information necessary to successfully prosecute violations.
- The Biologists also review the compliance history for the firm/person inspected and meet with the Deputy before issuing a violation notice. The Deputy is responsible for approving violation notices, case files, and Notices of Proposed Action (NOPAs).
- There needs to be improved communications and coordination between DPR and the county associated with setting up times when the DPR EBL can meet with biologists to conduct oversight inspections.

Inspections performed by the CAC were found to:

- Adequately document non-compliances/violations; and
- Include appropriate follow-up inspections and procedures.

2) Investigations

The Alameda CAC investigation procedures and performance were evaluated through observation, record review, and interviews of relevant staff and found to conform to DPR standards and expectations.

- The CAC investigates all complaints and complete their reports in a timely manner. The CAC refers and/or notifies DPR and other agencies, as required.
- All of the staff of the Alameda CAC's office that conducts pesticide enforcement investigations are designated as Agricultural Biologists.
- All PUE Biologists attended the Pesticide Episode Investigation Training in 2006. Training on investigative sampling is provided to the staff on an annual basis.
- Investigations are thorough and complete and are submitted on approved forms and in the approved format. The investigations document violations and the CAC collects evidence according to DPR standards. The investigations adequately provide the information necessary to successfully prosecute violations.

Investigations performed by the CAC were found to:

- Adequately address label, law and regulatory requirements, if applicable; and
- Include interviews of employers and employees, as appropriate.

C) Enforcement Response:

Alameda County Biologists have been sending decision reports (DRs) to DPR for review. DPR has reviewed the DRs and sent them back with comments from the EBL so that when this requirement does become law biologists will know what is required in the DRs and what is to be expected of them prior to issuance to DPR. Most of the DRs are well written; however, biologists need some assistance in determining what appropriate category (A, B or C) the non-compliances belong in. Biologists also need some practice in writing the details of the inspections and

explanations associated with justification for their enforcement/compliance decisions.

III. Corrective Actions Previously Identified

- The county has not yet implemented the “Application for Restricted Material Permits” form that they created, as stated in their 2005-2006 EWP.
- There has been no increase in the opportunity for the DPR Enforcement Branch Liaison (EBL) to conduct oversight inspections performed with the county, as stated in the 2005-2006 EWP.
- The Enforcement Response Regulations (ERR) have only partially been implemented, as stated in the 2005-2006 EWP. Decision Reports are still outstanding in association with non-compliances discovered during FY 06/07 and no tracking system has been set up for follow-up or enforcement/compliance action tracking.

IV. Recommended Corrective Actions

DPR and the staff person responsible for the county PUE program have jointly identified the following corrective actions:

Restricted Materials Permitting:

The county will implement the “Application for Restricted Material Permits” form that they created to improve the county’s permit process by ensuring all required information is complete, accessible and available for each permit application.

Compliance Monitoring Inspections:

- DPR has requested that they modify the current inspection strategy and has formulated a plan for additional inspections associated with smaller growers that have non-compliance issues in the Livermore area. The PUE Deputy has stated that he will reevaluate the targeting strategy for inspections. DPR will assist the county by providing inspection strategy guidance.
- DPR has requested that the Alameda CAC ensure that greater opportunity is provided to the DPR EBL to conduct oversight inspections with the CAC’s agricultural biologists.

Investigations:

The CAC, with assistance from DPR, will provide training in investigative techniques and evidence collection.

Enforcement Response:

- The PUE Deputy has stated that he will work with his biologists to implement the ERP and ensure that his biologists follow ERR guidelines when making decisions on appropriate enforcement/compliance actions to be taken and conduct these decisions in a timely manner. DPR has reviewed the DRs and sent them back with comments from the EBL so that when this requirement does become regulation the county biologist will know what is required in the DRs and what is to be expected of them prior to their issuance to DPR. Most of the DRs are well written; however, biologists need some assistance in

determining what appropriate category (A, B or C) the non-compliances belong in. The biologists also needs some practice in writing the details of the inspections and explanations associated with justification for his enforcement/compliance decisions.

- A tracking system will be set up for follow-up or enforcement/compliance action tracking.

IV. Non-Core and Desirable Activities

There are no non-core activities planned for the county.